

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1633 be amended to read as follows:

- 1 Page 2, delete lines 27 through 42 and insert:
2 "SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE
3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records
5 and documents related to services performed on behalf of a
6 homeowner for at least three (3) years after the termination or
7 conclusion of a contract with the homeowner.**
8 SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE
9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
10 1, 2009]: **Sec. 12.5. "Real estate transaction" has the meaning set
11 forth in IC 25-34.1-10-8.**
12 SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,
13 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2009]: Sec. 7. A person may not:
15 (1) divide a loan transaction into separate parts with the intent of
16 evading a provision of this article;
17 (2) structure a home loan transaction as an open-end loan with the
18 intent of evading the provisions of this article if the loan would be
19 a high cost home loan if the home loan had been structured as a
20 closed-end loan; ~~or~~
21 ~~(3) engage in a deceptive act in connection with a:~~
22 ~~(A) home loan; or~~
23 ~~(B) loan described in IC 24-9-1-1.~~
24 **(3) engage or solicit to engage in a real estate transaction or**

1 a consumer credit mortgage transaction without a permit or
2 license required by law; or

3 (4) represent that a real estate transaction or a consumer
4 credit mortgage transaction has sponsorship, approval,
5 performance, characteristics, accessories, uses, or benefits
6 that:

7 (A) the real estate transaction or consumer credit
8 mortgage does not have; and

9 (B) the person knows or reasonably should know the real
10 estate transaction or consumer credit mortgage does not
11 have.

12 SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may
14 petition the board to accept the surrender of the practitioner's license
15 instead of having a hearing before the board. The practitioner may not
16 surrender the practitioner's license without the written approval of the
17 board, and the board may impose any conditions appropriate to the
18 surrender or reinstatement of a surrendered license. **The board may**
19 **not accept the surrender of a practitioner's license if the office of**
20 **the attorney general:**

21 (1) has filed an administrative complaint concerning the
22 practitioner's license; and

23 (2) opposes the surrender of the license.

24 SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,
25 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to
27 disciplinary sanctions may be required by a board to pay the costs of
28 the proceeding. The practitioner's ability to pay shall be considered
29 when costs are assessed. If the practitioner fails to pay the costs, a
30 suspension may not be imposed solely upon the practitioner's inability
31 to pay the amount assessed. These costs are limited to costs for the
32 following:

33 (1) Court reporters.

34 (2) Transcripts.

35 (3) Certification of documents.

36 (4) Photo duplication.

37 (5) Witness attendance and mileage fees.

38 (6) Postage.

39 (7) Expert witnesses.

40 (8) Depositions.

41 (9) Notarizations.

42 (10) Administrative law judges.

43 (11) Real estate appraisals.

44 SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS
45 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

46 (1) performs the acts of a salesperson without a salesperson

license;

(2) performs the acts of a broker without a broker license; or

(3) conducts, or solicits or accepts enrollment of students for, a course as prescribed in IC 25-34.1-3 without course approval;

commits a Class A infraction. Upon conviction for an offense under this section, the court shall add to any fine imposed, the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, it must be alleged and proved that, at the time the cause of action arose, the party seeking relief was not in violation of this section.

(c) The commission may issue a cease and desist order to prevent violations of this section.

(1) If the commission determines that a person is violating this section, or is believed to be violating this section, the commission may issue an order to that person setting forth the time and place for a hearing at which the affected person may appear and show cause as to why the challenged activities are not in violation of this section.

(2) After an opportunity for hearing, if the commission determines that the person is violating this section, the commission shall issue a cease and desist order which shall describe the person and activities which are the subject of the order.

(3) A cease and desist order issued under this section is enforceable in the circuit courts of this state.

(d) The attorney general, the commission, or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state to enjoin a person from violating this section.

(e) In charging any person in a complaint for an injunction or in affidavit, information, or indictment with the violation of the provisions of this section, it is sufficient, without averring any further or more particular facts, to charge that the person upon a certain day and in a certain county either acted as a real estate broker or salesperson not having a license or conducted, or solicited or accepted enrollment of students for, a broker or salesperson course without course approval.

(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be disciplined under IC 25-1-11 and this section.

~~(f)~~ **(g)** Each enforcement procedure established in this section is supplemental to other enforcement procedures established in this section.

SECTION 9. IC 32-30-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as provided in IC 32-30-10.5 for first lien mortgage transactions**, if a mortgagor defaults in the performance of any condition contained in a

1 mortgage, the mortgagee or the mortgagee's assigns may proceed in the
 2 circuit court of the county where the real estate is located to foreclose
 3 the equity of redemption contained in the mortgage.

4 (b) If the real estate is located in more than one (1) county, the
 5 circuit court of any county in which the real estate is located has
 6 jurisdiction for an action for the foreclosure of the equity of redemption
 7 contained in the mortgage.

8 SECTION 10. IC 32-30-10-10 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

10 (1) proceed to foreclose the mortgagee's mortgage:

11 (A) while the plaintiff is prosecuting any other action for the
 12 same debt or matter that is secured by the mortgage; or

13 (B) while the plaintiff is seeking to obtain execution of any
 14 judgment in any other action; or

15 (2) prosecute any other action for the same matter while the
 16 plaintiff is foreclosing the mortgagee's mortgage or prosecuting
 17 a judgment of foreclosure; or

18 (3) proceed to foreclose a mortgage (as defined in
 19 IC 32-30-10.5-5) until the notice under IC 32-30-10.5-8(a) has
 20 been sent, if required.

21 SECTION 11. IC 32-30-10.5 IS ADDED TO THE INDIANA
 22 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2009]:

24 **Chapter 10.5. Foreclosure Prevention Agreements for**
 25 **Residential Mortgages**

26 **Sec. 1. (a) The general assembly makes the following findings:**

27 (1) **Indiana faces a serious threat to its state economy and to**
 28 **the economies of its political subdivisions because of Indiana's**
 29 **high rate of residential mortgage foreclosures, which**
 30 **constitutes an emergency.**

31 (2) **Indiana's high rate of residential mortgage foreclosures**
 32 **has adversely affected property values in Indiana, and may**
 33 **have an even greater adverse effect on property values if the**
 34 **foreclosure rate continues to rise.**

35 (3) **It is in the public interest for the state to modify the**
 36 **foreclosure process to require creditors and debtors to engage**
 37 **in good faith negotiations designed to avoid foreclosure by**
 38 **allowing debtors to repay their mortgages.**

39 (b) **The purpose of this chapter is to avoid unnecessary**
 40 **foreclosures of residential properties and thereby provide stability**
 41 **to Indiana's statewide and local economies by:**

42 (1) **requiring early contact and communications between**
 43 **creditors, their authorized agents, and debtors in order to**
 44 **engage in negotiations that could avoid foreclosure; and**

45 (2) **facilitating the modification of residential mortgages in**
 46 **appropriate circumstances.**

47 **Sec. 2. As used in this chapter, "creditor" refers to:**

1 (1) the creditor (as defined in IC 24-4.4-1-301(2)); or
 2 (2) a mortgage servicer;
 3 in a first lien mortgage transaction (as defined in
 4 IC 24-4.4-1-301(6)).

5 Sec. 3. As used in this chapter, "debtor" refers to the mortgagor
 6 in a first lien mortgage transaction (as defined in
 7 IC 24-4.4-1-301(6)).

8 Sec. 4. As used in this chapter, "foreclosure prevention
 9 agreement" means a written agreement that:

- 10 (1) is executed by both the creditor and the debtor; and
 11 (2) offers the debtor an individualized plan that may include:
 12 (A) a temporary forbearance with respect to the mortgage;
 13 (B) a reduction of any arrearage owed by the debtor;
 14 (C) a reduction of the interest rate that applies to the
 15 mortgage;
 16 (D) a repayment plan;
 17 (E) a deed in lieu of foreclosure;
 18 (F) reinstatement of the mortgage upon the debtor's
 19 payment of any arrearage;
 20 (G) a sale of the property; or
 21 (H) any loss mitigation arrangement or debtor relief plan
 22 established by federal law.

23 Sec. 5. As used in this chapter, "mortgage" refers to a first lien
 24 mortgage transaction (as defined in IC 24-4.4-1-301(6)).

25 Sec. 6. As used in this chapter, "mortgage foreclosure
 26 counselor" means a foreclosure prevention counselor who is part
 27 of, or has been trained or certified by, the Indiana Foreclosure
 28 Prevention Network.

29 Sec. 7. As used in this chapter, "mortgage servicer" means the
 30 last person to whom:

- 31 (1) a debtor in a mortgage; or
 32 (2) the debtor's successor in interest;

33 has been instructed to send payments on the mortgage.

34 Sec. 8. (a) After June 30, 2009, except as provided in subsection
 35 (d) and section 10(f) of this chapter, before a creditor files an
 36 action for foreclosure, the creditor shall send to the debtor by
 37 certified mail, return receipt requested, a presuit notice in a form
 38 prescribed by the Indiana housing and community development
 39 authority established by IC 5-20-1-3 that informs the debtor that
 40 the creditor intends to initiate a foreclosure and that the debtor
 41 may obtain assistance from a foreclosure counselor and that
 42 provides information on how to contact a housing counselor.

43 (b) The notice required by subsection (a) shall be sent to:

- 44 (1) the address of the mortgaged property; or
 45 (2) the last known mailing address of the debtor if the
 46 creditor's records indicate that the mailing address of the
 47 debtor is other than the address of the mortgaged property.

(c) Except as provided in subsection (d) and section 10(f) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor of a right to participate in a settlement conference. The notice shall be served with the complaint and in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference not later than thirty (30) days after the notice is served.

(d) A creditor is not required to send the notices described in this section if:

- (1) the loan is secured by a dwelling that is not the debtor's primary residence;
- (2) the loan has been the subject of a prior foreclosure prevention plan;
- (3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or
- (4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor.

Sec. 9. (a) After June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

- (1) The creditor has given the notice required under section 8(c) of this chapter.
- (2) The debtor either:
 - (A) does not contact the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under section 8(c) of this chapter; or
 - (B) contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a conference under section 8(c) of this chapter and, upon the conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(b) In a foreclosure action filed under IC 32-30-10-3, the creditor shall attach to the complaint filed with the court a copy of the notice sent to the debtor under section 8(a) of this chapter.

(c) In a foreclosure action filed after June 30, 2009, the court may not render a judgment of foreclosure until sixty (60) days after the date the notice required by section 8(a) of this chapter was sent unless the mortgaged property is vacant.

Sec. 10. (a) Unless a settlement conference is not required under

1 this chapter, the court shall issue a notice of a settlement
 2 conference if the debtor contacts the court to schedule a settlement
 3 conference as described in section 8(c) of this chapter. The court's
 4 notice of a settlement conference must do the following:

5 (1) Order the creditor and the debtor to conduct a settlement
 6 conference on or before a date and time specified in the
 7 notice, which date must not be earlier than twenty-five (25)
 8 days after the date of the notice or later than sixty (60) days
 9 after the date of the notice, for the purpose of attempting to
 10 negotiate a foreclosure prevention agreement.

11 (2) Require the debtor to contact a mortgage foreclosure
 12 counselor before the date of the settlement conference. The
 13 notice must provide the contact information for the Indiana
 14 Foreclosure Prevention Network.

15 (3) Require the debtor to bring to the settlement conference
 16 the following documents needed to engage in good faith
 17 negotiations with the creditor:

18 (A) Documentation of the debtor's present and future
 19 income, expenses, assets, and liabilities, including
 20 documentation of the debtor's employment history.

21 (B) Any other documentation or information that the court
 22 determines is needed for the debtor to engage in good faith
 23 negotiations with the creditor. The court shall identify any
 24 documents required under this clause with enough
 25 specificity to allow the debtor to obtain the documents
 26 before the scheduled settlement conference.

27 (4) Require the creditor to bring to the settlement conference
 28 a complete transaction history for the mortgage upon which
 29 the mortgage foreclosure action is based.

30 (5) Inform the parties that:

31 (A) each party has the right to be represented by an
 32 attorney or assisted by a mortgage foreclosure counselor
 33 at the settlement conference; and

34 (B) an attorney or a mortgage foreclosure counselor may
 35 participate in the settlement conference in person or by
 36 telephone.

37 (6) Inform the parties that the settlement conference will be
 38 conducted by telephone on the date and time specified in the
 39 notice under subdivision (1) unless the parties submit to the
 40 court a stipulation to modify the date, time, and place of the
 41 settlement conference.

42 (b) The court may require any person that is a party to the
 43 foreclosure action to appear at or participate in a settlement
 44 conference held under this section, and, for cause shown, the court
 45 may order the creditor and the debtor to reconvene a settlement
 46 conference at any time before judgment is entered.

47 (c) At the court's discretion, a settlement conference may or

1 may not be attended by a judicial officer.

2 (d) The creditor shall ensure that any person representing the
3 creditor:

4 (1) at a settlement conference scheduled under subsection (a);

5 or

6 (2) in any negotiations with the debtor designed to reach
7 agreement on the terms of a foreclosure prevention
8 agreement;

9 has authority to conduct negotiations.

10 (e) If, as a result of a settlement conference held under this
11 section, the debtor and the creditor agree to enter into a
12 foreclosure prevention agreement, the agreement shall be reduced
13 to writing and signed by both parties, and each party shall retain
14 a copy of the signed agreement. Not later than seven (7) business
15 days after the signing of the foreclosure prevention agreement, the
16 creditor shall file with the court a notice indicating that a
17 foreclosure prevention agreement has been reached. At the election
18 of the creditor, the foreclosure shall be dismissed or stayed for as
19 long as the debtor complies with the terms of the foreclosure
20 prevention plan.

21 (f) If a foreclosure is dismissed and a default in the terms of the
22 foreclosure prevention plan later occurs, the creditor or its assigns
23 may bring a foreclosure action without being required to send the
24 notices described in section 8 of this chapter.

25 (g) Participation in a settlement conference under this section
26 satisfies any mediation or alternative dispute resolution
27 requirement established by court rule.

28 **Sec. 11. (a) This section applies to a mortgage foreclosure action**
29 **with respect to which the creditor has filed the complaint in the**
30 **proceeding before July 1, 2009, and the court having jurisdiction**
31 **over the proceeding has not rendered a judgment of foreclosure**
32 **before July 1, 2009.**

33 **(b) In a mortgage foreclosure action to which this section**
34 **applies, the court having jurisdiction of the action shall serve**
35 **notice of the availability of a settlement conference under section**
36 **8(c) of this chapter.**

37 **SECTION 12. IC 32-30-12-1 IS AMENDED TO READ AS**
38 **FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Except as provided**
39 **in IC 32-30-10.5 for first lien mortgage transactions, it is not**
40 **necessary in any action upon a mortgage or lien to give time for:**

41 (1) the payment of money; or

42 (2) performing any other act.

43 Final judgment may be given in the first instance."

44 Delete pages 3 through 15.

(Reference is to HB 1633 as printed February 20, 2009.)

Representative Burton